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LEGAL IMMIGRATION ACT OF 1996

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Mr. HATCH, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 1665]

The Committee on the Judiciary reports an original bill (S. 1665) to amend the Immigration and Nationality Act to change the level and revise the preference system for the admission of immigrants to the United States, and to provide increased protections to American workers, and for other purposes; and recommends that the bill do pass.

CONTENTS

29–010

I. PURPOSE

The committee bill is intended to reform legal immigration to the United States so that it might better serve the national interest. The bill addresses issues regarding both immigrant and nonimmigrant visas, and includes several miscellaneous provisions.

1. REVISION OF FAMILY-SPONSORED PREFERENCE CLASSIFICATIONS

The problem

The current system of family reunification requires reform. Current backlogs require families to wait years to be united. The backlog of spouses and children of permanent residents, for example, is 1.1 million. A permanent resident applying today to bring his wife and children to the United States faces a 4- or 5-year wait. For Americans trying to bring their brothers and sisters here, the wait in the 1.6 million-person backlog may be 20 years or more.

The current system also gives almost equal priority to the various family categories, whether it is for the reunification of the "nuclear family" (spouses and unmarried minor children) or more extended family members. This means visas continue to be allocated to adult brothers and sisters of some U.S. petitioners—often with their own spouses and children (in-laws, nieces, and nephews of the petitioner)—while spouses and children of other petitioners wait in line.

Some have proposed to solve this inequity by abolishing the nonnuclear family categories. The subcommittee bill followed the Jordan Commission's recommendation to retain categories for:

"Immediate relatives" of citizens (parents, spouses, and unmarried minor children), and

Spouses and unmarried minor children of permanent residents, but to abolish categories for:

Adult children of citizens,

Adult children of permanent residents, and

Brothers and sisters of citizens.

Family preference system

The committee adopted a priority system under which nonnuclear family categories would remain, but, after 10 years, would get visas only if categories for spouses and children did not need them. This system would be phased in over 10 years.

The system would operate as follows:

Category	Current law	Committee bill
Immediate relatives: Spouses/minor children/parents of citizens	Unlimited (currently estimated at 250,000).	Unlimited (currently estimated at 250,000).
Family preference categories [1]:		
Spouses/minor children of permanent residents ("2A")	87,934 (at least 77% of 114,200**).	175,000 unused visas "flow down" to lower categories.

Category	Current law	Committee bill
Adult unmarried sons/daughters of citizens (''First'')	23,400	(1) 35,000 floor during backlog reduction.
Adult married sons/daughters of citizens (''Third'')	23,400	(1) 40,000 floor during backlog reduction.
Adult unmarried sons/daughters of permanent residents (''2B'')	26,266 (up to 23% of 114,200 [2]).	(1)
Brothers and sisters of citizens (''Fourth'')	65,000	(1)
Totals	480,000 per year	425,000 per year.

[1] Under current law, unused numbers in family preference categories ''fall down'' to the next lower category, in the following order: First, 2A, 2B, Third, Fourth.

[2] This number could be somewhat greater depending on the number of immediate relatives and unused employment numbers in the prior year.

Backlog reduction program

In addition to these changes in the permanent program of family immigration, the Committee adopted a 10-year backlog reduction program:

TEMPORARY FAMILY-BACKLOG REDUCTION

Category	Committee bill
Spouses/unmarried minor children of permanent residents (1.1 million backlog)	25,000/year for five years (125,000 total).
Siblings of adult citizens (1.6 million backlog)	50,000/year for first five years; 75,000/year for second five years (625,000 total).
Total backlog numbers	75,000/year for ten years (750,000 total).

2. REVISION OF H–1B ''SPECIALTY OCCUPATION'' PROGRAM

The problem

The H–1B program provides U.S. employers with temporary foreign workers to fill certain ''specialty occupations.'' There have been some abuses of the program, usually involving employers which pay their H–1B workers less than the prevailing wage at the site where the actual work is done. Frequently, the ''employer'' is a ''job contractor,'' which in effect leases the H–1B workers to another firm, where the work is actually performed. Such underpayment creates a situation where H–1B workers are cheaper and therefore more attractive than U.S. workers (citizens and lawful permanent residents), thereby posing a threat both to U.S. workers and to companies that pay the true prevailing wage.

H–1B reforms

The bill is intended to curb the abuses of the H–1B worker program in a way that does not unnecessarily burden those employers who comply with the law. Therefore, it provides for greater enforcement through increased monitoring of employers that employ H–1B workers and increased penalties on employers who violate the law.

Many violations of current law regarding H–1B workers have been committed by employers who depend on H–1B workers for a substantial percentage of their workforce. Therefore, the bill places these "H–1B dependent" employers under stricter scrutiny, while relieving employers which are not H–1B dependent from certain regulatory requirements.

II. Summary of Bill's Provisions

1. PROVISIONS REGARDING IMMIGRANTS

The current system of family-based admissions is revised in order to make possible an eventual reduction in the number of family-based immigrants admitted each year (after a backlog reduction program is completed), to set priorities for the admission of such immigrants, and to address the problem of large backlogs of aliens who are the beneficiaries of approved visa petitions, but are not immediately admissible because of numerical limitations.

The committee bill revises slightly the preference system established for employment-based immigration by eliminating visas for unskilled immigrants. Current law authorizes up to 10,000 visas per year for unskilled immigrants. Under the committee bill, such numbers would instead be available for skilled-worker categories.

The "diversity" immigrant visa program is reduced from 55,000 to 27,000 visas per year.

The committee bill also makes several changes in the system of numerical limitations. The worldwide level of family-sponsored immigrants is determined according to a formula in which the number of "immediate relatives" (spouses, children, and parents of U.S. citizens) in the previous year is subtracted from 425,000. The resultant figure is then increased by the number of employment-based immigrant visas unused in the previous fiscal year. The higher of this number or 175,000 is the limit for the family-preference categories. In addition, 75,000 visas are provided each year for 10 years after enactment for "backlog reduction". During the first 5 years, 25,000 of such "backlog reduction" visas are made available annually to backlogged spouses and unmarried, minor children of aliens lawfully admitted for permanent residence, and 50,000 visas annually are made available to backlogged brothers and sisters of adult U.S. citizens. During the second 5 years, all 75,000 visas are made available to backlogged siblings of citizens.

The number of employment-based immigrants remains at 140,000 per year.

The committee bill also sets the per-country limit at 20,000 annually for preference immigrants, with the exception of "contiguous countries" (Canada and Mexico), for which the annual limit is set at 40,000. Such limit will not be in effect, however, for the spouses and children of permanent residents as long as backlog reduction numbers are provided for such category.

Assuming a flow of 250,000 ''Immediate Relatives'' of U.S. Citizens, (this estimate was given by Senators Kennedy and Abraham during the markup), *total legal immigration* to the United States under the committee bill will be 667,000 per year for the next 10 years, plus refugees (90,000 currently) and asylees (10,000 currently).

Admissions would be:

Category	Current law	Committee bill
Immediate relatives: Spouses/minor children/parents of citizens	Unlimited (assume 250,000).	Unlimited (assume 250,000).
Family preference categories:		
Spouses/minor children of permanent residents	91,014 [1]	100,000 + 25,000 (backlog) [2]=125,000 total.
Adult, unmarried children of citizens	23,400	35,000.
Adult married children of citizens	23,400	40,000.
Adult unmarried children of permanent residents	27,186 [1]	0 visas (until backlog of spouses/minor children eliminated).
Brothers and sisters of citizens	65,000	0 visas + 50,000 (backlog) [2]=50,000 total.
Employment-based visas	140,000	140,000.
Diversity visas	55,000	27,000.
Refugees (fiscal year 1996 level)	90,000	90,000.
Asylees (estimated)	10,000	10,000.
Total annual immigration next 10 years	775,000	767,000 [3].

[1] Current law provides that spouses and minor children of permanent residents receive 114,200 visas per year plus the difference between 254,000 and the level of ''Immediate Relative'' admissions. This table assumes 250,000 ''Immediate Relatives'' admissions per year, so an additional 4,000 visas will be available to the category for spouses and children of legal permanent residents. 77 percent of this total (118,400) must go to the spouses and unmarried, minor children of LPRs (91,014), while 23 percent is available for unmarried, adult children of LPRs (27,186).

[2] Note on backlog visas: During the first 5 years after enactment, 25,000 backlog visas are provided to spouses and unmarried, minor children of legal permanent residents; 50,000 visas per year are provided to siblings of U.S. citizens (and their immediate families). After 5 years, 75,000 backlog visas will be provided to siblings of citizens (and their immediate families); no backlog visas would be provided to spouses and minor children of legal permanent residents. For the backlog visas, the chart reflects the distribution of visas during the first 5 years after enactment.

[3] After 10 years, the backlog reduction visas will expire. For fiscal year 2007 and each subsequent year, immigration levels under the committee bill will be 75,000 lower.

2. PROVISIONS REGARDING NONIMMIGRANTS

The bill amends certain provisions of the law relating to nonimmigrants. The bill eliminates the requirement for an ''objective system'' to determine *actual* wages paid to H-1B workers and authorizes certain large employers to use a system certified by the Secretary of Labor. The bill also authorizes employers to use various methods to determine the *prevailing* wage level. It increases the penalties imposed upon employers who violate the attestations made in H-1B petitions, and reduces certain regulatory requirements for employers who are not defined as ''H-1B-dependent'' (a status based on the number of H-1B workers in an employer's work force). The bill authorizes the Secretary of Labor to initiate investigations of H-1B-dependent employers.

The committee bill provides that, with respect to labor certification, both for immigrants and for nonimmigrants, the prevailing wage level for researchers at an institution of higher education, or

a related or affiliated nonprofit entity or Federal research entity, shall be computed with reference only to researchers at other such entities in the area of employment.

The committee bill extends the visa waiver pilot program for an additional 2 years, until September 30, 1998. However, it establishes a procedure for the termination and removal from the program of countries which no longer meet the qualifying standards. It also repeals the provision which enabled countries to qualify for the program in "probationary status," but allows countries which have already qualified in such status to remain in the program (subject to the removal procedure).

3. MISCELLANEOUS PROVISIONS

The Committee bill repeals current provisions for the admission of "Amerasians," effective October 1, 1997.

The bill makes suspension of deportation unavailable to an alien who has entered the U.S. without inspection, unless the deportation of such alien would result in "exceptional and extremely unusual hardship."

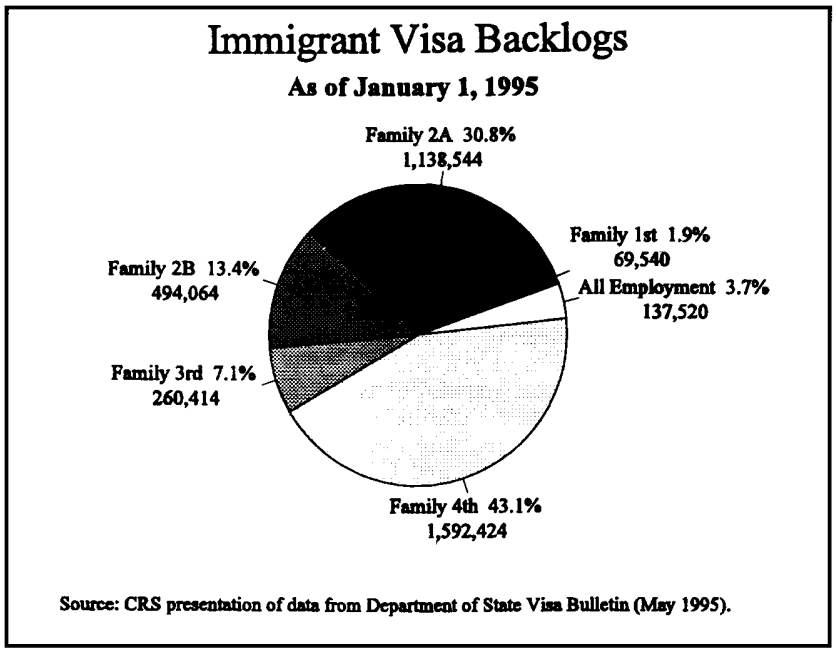
The bill makes excludable any person convicted of, or who admits having committed, an act of economic espionage or piracy of intellectual property.

The bill requires international matchmaking organizations to disseminate to its recruits ("mail-order brides") such information regarding immigration and naturalization as the Attorney General finds appropriate, and provides for civil penalties for each violation of that requirement. The bill requires the Attorney General to conduct a study of the extent of mail-order marriages, the fraud and domestic abuse related thereto, and the significance of such marriages for implementation of the Violence Against Women Act of 1994.

III. NEED FOR CURRENT LEGISLATION

The committee bill addresses the problem of escalating backlogs in the categories of spouses and children of aliens admitted for permanent residence, and brothers and sisters of citizens. Backlogs in all family-preference visa categories combined have more than tripled in the past 15 years, rising from 1.1 million in 1981 to 3.6 million in 1996.

The estimated level of the backlogs, as of January 1, 1995, the latest date for which figures are available, is as follows:



The four family preferences and their annual numerical allocations under current law are as follows:

1st preference—unmarried adult sons and daughters of U.S. citizens (23,400 plus visa not required for 4th preference);

2nd preference—2(a): spouses and unmarried minor children of permanent resident aliens; 2(b): unmarried adult sons and daughters of permanent resident aliens (total 2nd preference visas are 114,200 plus visas not required for 1st preference);

3rd preference—married sons and daughters of U.S. citizens (23,400 plus visas not required for 1st or 2nd preference);

4th preference—brothers and sisters of adult U.S. citizens (65,000 plus visas not required for 1st, 2nd, or 3rd preferences).

The backlog of spouses and of unmarried minor and adult children of permanent resident aliens (2nd preference) now exceeds that for the traditionally oversubscribed brothers and sisters preference (4th), for the first time since the basic family preference system was established in 1965. This is of considerable concern because the reunification of spouses and children is of the highest priority.

Congress, in the Immigration Act of 1990, established the U.S. Commission on Immigration Reform to examine and make recommendations regarding the implementation and impact of U.S. immigration policy. The 9-member Commission, chaired by the late Barbara Jordan, produced a broad range of recommendations related to legal immigration in its July 1995 report *Legal Immigration:*

Setting Priorities. The Commission stated its conviction that ''our current immigration system must undergo major reform to ensure that admissions continue to serve our national interests.'' It recommended ''a significant redefinition of priorities and a reallocation of existing admission numbers to fulfill more effectively the objectives of our immigration system.''

IV. History of Current Legislation

The current legal immigration preference system grew out of legislative changes begun in 1965. The Immigration Act of 1965 abolished the ''national origins'' quota system for the selection of immigrants and established a per-country limit of 20,000. Immigrant visas were allocated among seven categories based on family reunification, needed skills, and refugees.

In the late 1970's, the growth of the problem of illegal immigration, the significant rise in immigration pressures and public concern about immigration, and the increasing numbers of refugees in many parts of the world caused Congress to establish a panel of distinguished Americans to review our immigration and refugee policies and make recommendations for appropriate reforms. The 1981 report of the 16-member Select Commission on Immigration and Refugee Policy, presented by its chairman, the Reverend Theodore M. Hesburgh, concluded that *controlled* immigration continued to be in the national interest. The Select Commission's comprehensive recommendations as to both legal and illegal immigration became the basis for immigration reform initiatives over the subsequent decade.

In both the Senate and the House, omnibus immigration reform bills based on the Select Commission recommendations were introduced, extensively debated and passed in one or both houses in the years 1981–86. In what ultimately became the Immigration Reform and Control Act of 1986, however, Congress chose to focus solely on issues of illegal immigration, and to defer consideration of the Select Commission's recommendations for reform of legal immigration. The 1986 Act was based on three key elements: enhanced border enforcement, a system of sanctions against employers who knowingly hire unauthorized aliens, and an amnesty for certain persons illegally in the United States.

Approximately 2.7 million persons received lawful permanent resident status through the legalization program from 1989 to 1993: about 1.6 million as long-term illegal residents and another 1.1 million as ''Special Agricultural Workers.'' These legalization beneficiaries have the right to file immigration petitions under the INA, and have in fact petitioned for their relatives, some 800,000 of whom are in the current visa ''backlog,'' waiting to be admitted as permanent residents to the United States.

The Immigration Act of 1990 made significant changes in the immigration preference system put in place by the Immigration Act of 1965. The 1990 Act:

Divided immigration preferences into family-based and employment-based systems;

Increased employment-based immigration from 54,000 annually to 140,000;

Increased the worldwide annual immigration level to 675,000 (a 37 percent increase), including 480,000 family-based immigrants, 140,000 employment-based immigrants, and 55,000 "diversity" immigrants (intended to provide immigration opportunities to those without relatives in this country).

In the family-related category, Congress retained the policy of numerically unrestricted admission of "immediate relatives" (spouses, unmarried minor children and parents) of U.S. citizens. But the number of persons admitted as immediate relatives of U.S. citizens is counted against the total of 480,000. To ensure a continuing flow of other family-based immigrants, which are subject to numerical limitation, Congress established a "floor" of 226,000 such admissions per year.

A variety of factors, including the 1986 legalization programs and the legal immigration changes of 1990, have created historically high levels of immigration (an average of 1.13 million per year in the years 1991–1994), and have dramatically increased the size of the "backlogs" of those awaiting admission as immigrants.

S. 1394 was introduced November 3, 1995 by Senator Alan K. Simpson. It was "marked-up" by the Judiciary Subcommittee on Immigration November 27, 1995, and reported to the Judiciary Committee on the same date by a vote of 5–2. The Subcommittee, by a 4–2 vote, agreed to merge S. 1394 with S. 269, also introduced by Senator Simpson.

On March 14, the Judiciary Committee voted to split the merged bill, and to consider the two bills, commonly known as "the legal bill" (an original bill containing provisions from S. 1394) and "the illegal bill" (an original bill containing provisions from S. 269), separately. On March 28, 1996, "the legal bill" was marked up by the Judiciary Committee and reported to the Senate.

V. Section-by-Section Analysis

TITLE I—IMMIGRANTS

SUBTITLE A—CHANGES IN IMMIGRANT CLASSIFICATIONS

Sec. 101. Family-sponsored preference classifications

Subsection (a) reprioritizes the existing family preference categories. (The so-called "immediate relative" category (the spouses, minor children, and parents of U.S. citizens) remains unchanged from current law.

The new priorities are:

First priority: spouses and unmarried minor children of permanent residents.

Second priority: unmarried adult sons and daughters of U.S. citizens.

Third priority: married sons and daughters of citizens.

Fourth priority: unmarried adult sons and daughters of permanent residents.

Fifth priority: brothers and sisters of adult citizens.

The number of visas allocated to the first priority is equal to the higher of (a) 175,000, or (b) 425,000 minus the "immediate relatives" in the prior year, plus the unused visa numbers in the prior year for employment-based immigrants. Any visas not required

under that priority then "flow down" to the second priority. Any visas not required by the second priority "flow down" to the third, and so on.

Thus, 175,000 visas (or the alternative number, if higher) are available to the family preference categories combined.

Subsection (b) requires that, for a temporary period, a minimum number of such family visas be provided for the second and third priorities. The second priority receives a minimum of 35,000; the third priority, a minimum of 40,000. These minimums or "floors" continue until backlogs in the first and second categories are eliminated. The floors are intended to assure that admissions will continue in the second and third categories unless, or until, such backlogs are being eliminated.

If either of the priorities does not require the amount reserved under the floors, then the remainder goes back into the general pool of family preference numbers.

Subsection (c) freezes new applications for the immigration of brothers and sisters until the backlog for such category has decreased to 150,000 (it is now 1.6 million).

Subsection (d) requires the State Department to report to Congress within two years its best estimate of the actual number of persons on the backlog for brothers and sisters.

Sec. 102. Repeal of preference category for unskilled immigrants

This section repeals provisions of current law that allow up to 10,000 of the 140,000 employment visas available each year to be used to admit employment-based immigrants for unskilled jobs.

Sec. 103. Not counting work experience as an unauthorized alien

This section provides that work experience obtained in the United States by an alien who was not authorized for such work shall not be taken into account in determining the alien's eligibility for an employment-based immigrant visa.

Sec. 104. Judicial review

This section clarifies and reforms the procedure for judicial review of the immigrant visa process. It establishes a limited period for suits challenging the allocation of visas or the adjudication of visa petitions, requiring that suit be brought within 90 days of the date of action or decision. Venue is solely the U.S. District Court for the District of Columbia; and only actual visa petitioners have standing to sue. The section provides that suits may be brought only after exhaustion of administrative remedies and may not be brought to compel agency action. It specifies that review must be on the administrative record, and provides that agency action must be sustained unless "clearly erroneous." It bars courts from reviewing decisions within an agency's discretion, and provides that courts may not reverse or remand an agency's decision because an agency's explanation of its action was not extensive enough.

Sec. 105. Conforming amendments

Sec. 106. Transition

This section provides that petitions for preference status under certain provisions of current law shall be deemed to be petitions under comparable provisions of the law as amended by the bill.

SUBTITLE B—CHANGES IN NUMERICAL LIMITS ON IMMIGRANTS

Sec. 111. Worldwide numerical limitation on family-sponsored immigration

This section changes the worldwide level of family immigration from 480,000 (current law) to 425,000. This includes both those entering under the unlimited "immediate relative" category as well as those entering under the five family preference categories.

Sec. 112. Worldwide numerical limitation on diversity immigration

This section reduces the number of diversity visas available annually from 55,000 to 27,000. It alters the formula for determining the number of visas available to low immigration countries, and contains an efficiency rule to ensure that consulates in countries with very few diversity participants are not burdened by the program. The section allows the State Department to charge a fee to cover the cost of administering the program.

Sec. 113. Numerical limitation on immigration from a single foreign state

This section re-establishes the per-country limit of 20,000 for preference immigrants in effect before 1990 (a 40,000 limit is established for "contiguous countries" and 5,000 for "dependent areas"). The limit would not, however, affect spouses and unmarried minor children of lawful permanent residents as long as backlog-clearance numbers were being provided for that category (see sec. 114).

As under current law, this limit would not restrict the level of "immediate relatives" of citizens. However, the bill would reduce the limit for a particular foreign state in a fiscal year by the number of immediate relatives of citizens above the 20,000 (40,000 for "contiguous countries" and 5,000 for "dependent areas") it sent in the prior year. For example, if in fiscal year 1995 the number of nationals from a non-contiguous country who entered as immediate relatives was 30,000, then the per-country limit for such country for fiscal year 1996 would be 10,000 (the amount by which 30,000 exceeds 20,000) fewer than the normal 20,000.

Sec. 114. Transition for certain backlogged spouses and children of lawful permanent residents and brothers and sisters of citizens

This section allocates 75,000 visas per year for 10 years for a backlog reduction program. These visas are available in addition to the normal 425,000 worldwide level.

For the first five years, 25,000 visas per year will be allocated for the backlog of spouses and unmarried minor children of permanent residents. Two categories of persons on that backlog will be ineligible for backlog visas, however. The first is those protected from deportation under the "family unity" provisions of the Immi-

gration Act of 1990. These are spouses or unmarried minor children of persons who benefitted from the immigration legalization program of the 1986 Act.

The second is those whose petitioning relative has satisfied the residence requirement for naturalization. This provision recognizes that the petitioning relative's failure to naturalize has kept their family members in the backlog. (If the sponsoring relative becomes a citizen, then their "immediate relatives" can come in promptly, without being subject to any numerical limit.)

The remaining 50,000 visas available annually during the first five years go to the backlog of brothers and sisters of adult citizens.

For the second five-year period of backlog reduction, all 75,000 visas available annually are applied to the backlog of brothers and sisters.

TITLE II—NONIMMIGRANTS

Sec. 201. Changes relating to H–1B nonimmigrants

Subsection (a) expands the power of the Secretary of Labor to investigate whether "H–1B dependent" employers have complied with the terms of their applications for H–1B employees. It allows the Secretary to initiate such investigations without first receiving a complaint against the employer from a third party. This section does not authorize the Secretary to conduct similar investigations of employers that are not H–1B dependent unless a complaint has first been filed against the employer by a third party.

Subsection (b) increases the penalties on employers who fail to comply with the terms of their applications for H–1B workers. The maximum monetary penalty for each such violation is increased from $1,000 to $5,000. In the case of an employer who has committed a second violation of its attestations more than one year after its first violation, the minimum period during which the employer will be barred from petitioning for additional H–1B workers is increased from one year to five years.

Subsection (c) defines an H–1B dependent employer as one which: (a) has fewer than 21 full-time employees who are employed in the U.S. and employs 4 or more H–1B workers, or (b) has 21 or more full-time employees who are employed in the U.S. and employs H–1B workers in a number equal to at least 20 percent of its work force.

The subsection includes a mechanism by which an H–1B dependent employer can be treated as a non-dependent employer for a probationary period of five years provided that such employer has developed a plan to reduce the number of H–1B workers in its work force within 5 years and such plan has been approved by the Secretary of Labor. The Secretary of Labor must review the implementation of such plan on an annual basis. Failure to successfully implement the plan will result in termination of the probationary status.

Subsection (d) provides that when determining the actual wage paid to its employees, an employer need not rely upon an "objective system" (a requirement of current law). Large employers (over 1,000 employees in the U.S.) may rely entirely upon their own compensation and benefits system for determining the actual wage,

provided that such system has been certified by the Secretary of Labor.

This subsection creates greater flexibility for employers in choosing a measure of prevailing wage that is accurate for their industry and location. It specifies that an employer can select a prevailing wage determination made by any legitimate public or private source, provided that the Secretary of Labor does not reject such determination within 45 days. In the case of both immigrants and nonimmigrants, the determination of the "prevailing wage" of a researcher at an institution of higher learning, or a related or affiliated nonprofit entity, or a nonprofit or Federal research institute or agency, may take into account only the prevailing wage at similar institutions in the area of employment.

Subsection (e) relieves employers that are not H–1B dependent from the obligations of (a) posting certain notices at worksites other than the ones listed on the application for the H–1B employee if such worksites are in the area of employment listed, and (b) filing an application for an H–1B employee with respect to worksites other than the employee's principal place of employment and those in which the employee spends over 45 working days a year (or 36 working days in any 36-month period).

Sec. 202. Visa waiver program

This section extends the visa waiver pilot program for an additional two years, until September 30, 1998. A procedure is established for the termination and removal of countries whose "disqualification rate" exceeds 2.0 percent, including a probationary period of three years in which the country can try to re-qualify for waiver-country status. Section 217(g) of the Immigration and Nationality Act, which authorizes countries to qualify for the program in a "probationary status," is repealed, although countries which qualified for the program in accordance with its terms may remain in the program.

TITLE III—MISCELLANEOUS PROVISIONS

Section 301. Repeal of Amerasian immigration law

This section repeals section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100–102; 8 U.S.C. 1101 note), effective October 1, 1997. During fiscal year 1997, an Amerasian, as defined in such Act, will be authorized to be accompanied only by his or her spouse and children. Any eligible Amerasian, and his or her spouse and children, who are interviewed and approved before the expiration of the Amerasian Immigration Act on October 1, 1997 will be entitled to enter the United States until October 1, 1998.

Sec. 302. Change in standards for suspension of deportation for aliens who entered without inspection

This section provides that aliens who entered the United States without inspection on or after the date of enactment must meet the stricter standards for suspension of deportation set forth in section 244(a)(2). The required period of physical presence becomes 10

years, and the standard to be applied by the Attorney General in cases involving persons who entered without inspection is changed from ''extreme hardship'' to ''exceptional and extremely unusual hardship.''

Sec. 303. Exclusion for economic espionage or the piracy of intellectual property

This section provides that aliens convicted of, or who admit having committed, an unlawful act pertaining to economic espionage or the piracy of intellectual property are excludable.

Sec. 304. Mail-order bride business

This section requires that international matchmaking organizations offering information on ''mail-order brides'' disseminate to their recruits such information regarding immigration and naturalization as the Attorney General determines to be appropriate, and provides that such organizations may be assessed civil penalties up to $20,000 for each violation of that requirement. The Attorney General is directed to conduct a study of the extent to which marriage fraud and domestic abuse are related to mail-order marriages, and their impact upon the provisions of Immigration and Nationality Act and the objectives of the Violence Against Women Act of 1994. The report shall be submitted to the Congress not later than one year from the date of enactment.

TITLE IV—EFFECTIVE DATES

Sec. 401. Effective dates

This section provides that the Act, and the amendments made by the Act, except as specifically noted, shall take effect on October 1, 1996.

VI. COMMITTEE ACTION

On March 28, 1996, with a quorum present, by a vote of 13 yeas to 4 nays, the committee ordered an original bill containing provisions from S. 1394, ''The Immigration Reform Act of 1995'' offered by Senator Simpson, to be favorably reported, as amended. A number of amendments were agreed to by unanimous consent, voice vote, or roll call vote, while others were rejected. Following is a list of the amendments considered by the committee.

RECORDED VOTES

1. Simpson amendment to strike employment sections (303, 304, 309(2) and 312) was agreed to by a rollcall vote of 12 yeas to 4 nays.

YEAS (12)	NAYS (4)
Hatch	Biden (by proxy)
Thurmond (by proxy)	Kennedy (by proxy)
Simpson	Simon
Grassley (by proxy)	Feingold
Brown	
Thompson	
Kyl	
DeWine	
Abraham	
Leahy (by proxy)	
Kohl (by proxy)	
Feinstein	

2. Kennedy/Abraham offered a family and diversity amendment which was agreed to by a rollcall vote of 11 yeas to 4 nays, with Senator Kohl noted as having voted present.

YEAS (11)	NAYS (4)	PRESENT (1)
Hatch	Thurmond	Kohl
Specter (by proxy)	Simpson	
Thompson (by proxy)	Brown (by proxy)	
DeWine	Kyl	
Abraham		
Biden (by proxy)		
Kennedy		
Leahy (by proxy)		
Simon (by proxy)		
Feinstein		
Feingold		

3. Kennedy amendment on non-displacement of U.S. workers (layoff protections) was defeated by a rollcall vote of 5 yeas to 11 nays.

YEAS (5)	NAYS (11)
Biden (by proxy)	Hatch
Kennedy	Thurmond
Leahy (by proxy)	Simpson
Simon	Grassley
Feingold	Specter (by proxy)
	Brown
	Thompson
	Kyl
	DeWine
	Abraham
	Feinstein

4. Kyl amendment to Senator Specter's amendment on H–1B nonimmigrants, to strike section subsection (a) was agreed to by a rollcall vote of 8 yeas to 6 nays.

YEAS (8)	NAYS (6)
Hatch	Grassley (by proxy)
Thurmond	Specter (by proxy)
Simpson	Abraham
Brown	Kennedy
Thompson (by proxy)	Simon
Kyl	Feingold
DeWine	
Feinstein	

5. Specter amendment offered by Senator Abraham, to make changes relating to H–1B nonimmigrants was agreed to by a rollcall vote of 11 yeas to 5 nays.

YEAS (11)	NAYS (5)
Hatch	Brown
Thurmond	Kennedy
Simpson	Leahy (by proxy)
Grassley (by proxy)	Simon
Specter (by proxy)	Feingold
Thompson (by proxy)	
Kyl	
DeWine	
Abraham	
Heflin (by proxy)	
Feinstein	

6. Kennedy amendment on recruitment of U.S. workers was defeated by a rollcall vote of 6 yeas to 10 nays.

YEAS (6)	NAYS (10)
Grassley (by proxy)	Hatch
Biden (by proxy)	Thurmond
Kennedy	Simpson
Leahy (by proxy)	Specter (by proxy)
Simon (by proxy)	Brown
Feingold	Thompson (by proxy)
	Kyl
	DeWine
	Abraham
	Feinstein

7. Feinstein second degree amendment to Senator Kennedy's amendment to reduce the number of employment-based visas from 100,000 to 85,000 was defeated by a rollcall vote of 5 yeas to 10 nays.

YEAS (5)	NAYS (10)
Kyl	Hatch
Kennedy	Thurmond
Leahy (by proxy)	Simpson
Simon	Grassley (by proxy)
Feinstein	Specter (by proxy)
	Brown
	Thompson (by proxy)
	DeWine
	Abraham
	Feingold

8. Kennedy amendment to reduce the number of employment-based visas to 100,000 was defeated by a rollcall vote of 7 yeas to 9 nays.

YEAS (7)	NAYS (9)
Kyl	Hatch
Kennedy	Thurmond
Leahy (by proxy)	Simpson
Simon	Grassley (by proxy)
Kohl (by proxy)	Specter (by proxy)
Feinstein (by proxy)	Brown
Feingold	Thompson
	DeWine
	Abraham

9. Specter, offered by Senator Hatch, to exempt professional athletes from the labor market screening requirement was defeated by a roll call vote of 5 yeas to 9 nays, with Senator Kohl noted as voting present.

YEAS (5)	NAYS (9)	PRESENT (1)
Hatch	Thurmond	Kohl
Simpson	Grassley (by proxy)	
Specter (by proxy)	Brown	
Thompson	Kyl	
Abraham	DeWine	
	Kennedy	
	Leahy (by proxy)	
	Simon	
	Feingold	

10. Kennedy amendment to delete the permanent unskilled worker category, effective June 1, 1997 was agreed to by a rollcall vote of 15 yeas to 0 nays.

YEAS (15)	NAYS (0)
Hatch	
Thurmond	
Simpson	
Grassley (by proxy)	
Brown	
Thompson (by proxy)	
DeWine	
Abraham	
Biden	
Kennedy	
Leahy (by proxy)	
Simon	
Kohl (by proxy)	
Feinstein	
Feingold	

11. To favorably report the bill, as amended, as an original bill:

YEAS (13)	NAYS (4)
Hatch	Kennedy
Thurmond	Leahy (by proxy)
Simpson	Simon
Grassley (by proxy)	Feingold
Brown	
Thompson (by proxy)	
Kyl	
DeWine	
Abraham	
Biden	
Heflin (by proxy)	
Kohl (by proxy)	
Feinstein	

The following amendments were agreed to by unanimous consent:

1. Senator Simpson's amendment to revise the backlog reduction program for spouses and children of permanent residents.

2. Senator Simpson's amendment to exempt U.S. sponsored J-visa holders from student visa fee.

3. Senator Simpson's amendment to extend the visa waiver pilot program.

4. Senator Kyl's amendment to prohibit aliens from using work experience acquired while not authorized to work to become permanent residents.

5. Senator Kyl's amendment to limit suspension of deportation for aliens who entered without inspection, as modified.

6. Senator Simon's amendment to establish separate prevailing wage determinations for academic and nonacademic researchers.

7. Senator Brown's amendment to deny travel visas to persons associated with economic espionage or the piracy of intellectual property.

8. Senator Kohl's amendment to add a new section to require a study on the mail-order bride business.

9. Senator Specter's amendment, offered by Senator Simon, to strike bill sec. 306 on "Effect of approved immigrant visa petition" with an agreement that parties would work to further modify the language.

The following amendment was agreed to by voice vote:

Senator Simpson's amendment to repeal the Amerasian law, with Senators Simon and DeWine noted as having voted nay.

VII. Cost Estimate

The Congressional Budget Office estimate of the costs of this measure and compliance with the requirements of the Unfunded Mandates Reform Act has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

VIII. Regulatory Impact Statement

In compliance with subsection (b) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the only significant regulatory impacts will arise from Sec. 304(b), which requires international matchmaking organizations to disseminate immigration information to recuits. No other significant impact will result from the implementation of the Committee bill, which largely reforms existing regulations and procedures without adding to them.

IX. ADDITIONAL VIEWS OF SENATOR SIMPSON

I voted to favorably report the Legal Immigration Act of 1996, but I have serious concerns over the failure of the legislation to address two important issues: (1) the desire of the American people to reduce immigration, and (2) the problem of "chain migration."

Reduction in immigration

In 1990, believing illegal immigration was under control, and, in fact, declining, I cosponsored legislation which increased overall legal immigration by 37 percent—the largest single increase in our Nation's history.

Unfortunately, we were overly optimistic in our assessment of the effectiveness of our efforts to control illegal immigration, and within a year of the 1990 act, illegal immigration to the United States was again on the increase. We estimate that 300,000 aliens now immigrate illegally every year (after taking into account the illegal aliens who leave every year). These are in addition to the 675,000 immigrants who come legally.

As a result of the 1990 increase in legal immigration, and the growing illegal immigration, the United States has experienced immigration at historically high levels. We have averaged more than 1.1 million immigrants annually over the past 5 years.

The American people have responded to this growth in immigration by calling on Congress to reduce immigration, and the Congress has received unmistakable signals that the state and local governments will take the matter into their own hands if Congress fails to act. The unexpectedly strong support for Proposition 187 in California is a stark illustration of this public concern and the message it sends to Washington.

Although the committee bill appears to make a small reduction in current immigration—from 675,000 under present law to about 667,000 under the committee bill—the Immigration and Naturalization Service estimates that immigration under the Committee bill will actually increase, substantially, over the next several years.

I believe that if Congress fails to reduce immigration—if it permits the committee bill to become law in its present form, thereby allowing immigration to increase substantially in the coming years—we will see more Proposition 187's. The people are not likely to accept the argument that Congress knows best what should be done in this area—especially not the people in the impacted states and localities who deal with the consequences of high immigration in their daily lives. They know they are far better judges of the real-world effect of immigration policy.

Chain migration

Under current immigration law we purport to establish "preferences" with regard to family immigration. Under this system of preferences we put the spouses and children of permanent residents in a higher preference category than the married sons and daughters of citizens and the brothers and sisters of citizens. This, of course, is appropriate. The spouses and children are the family members most likely to live together in the same household and are, therefore, the ones who should not be separated any longer than necessary. Nevertheless, under the current system, spouses and children (the "nuclear family") are forced to wait as long as five or more years before they can join their immediate family here in the United States. At the same time, despite their lower "preference," we admit more than 75,000 married sons and daughters of citizens, brothers and sisters of citizens, and *their* families every year. These nonnuclear-family relatives are primarily adults, who frequently enter with their own spouses and unmarried minor children (the in-laws and nieces and nephews of the U.S. petitioner). It is the preferences for these other adult relatives, and their children and spouses, who generate the heavy demand for the entry of members of entirely new family lines and thus the process of chain migration.

We should treat the "preferences" as true preferences. Visas should be made available to the highest preferences—those immediate family members who are most likely to live together in the same household with their relative here in America—before we admit the extended family members who have likely established their own households—as is the case with married sons and daughters and with many brothers and sisters of adult U.S. citizens.

Barbara Jordan's Commission on Immigration reform recommended that we provide the available visas to the members of the nuclear family—spouses and unmarried children—and abolish the preferences for the extended family members. I support that recommendation. I do not believe it is in the national interest to keep spouses and minor children separated for years.

To solve this problem of extended separation we can do one of two things. We can *increase legal immigration* and provide visas for, not only the immediate family, but also the married sons and daughters and brothers and sisters of citizens; *or* we can *limit the visas to those closest family members,* the spouses and the unmarried children of legal residents of the United States. For the reasons mentioned above, the American people strongly oppose an increase in immigration at this time. I believe they will support limiting visas to the members of the immediate family.

The committee bill will continue, for at least the next ten years, to provide a guaranteed number of visas to the extended family while the members of the nuclear family are required to wait to join their husband or wife, father or mother, in the United States. This is not a sustainable immigration policy.

AL SIMPSON.

ADDITIONAL VIEWS OF SENATORS ABRAHAM AND DEWINE

We would like to express our support for the final legal immigration reform bill (S. 1394) worked out by this committee. We are particularly pleased that the committee saw fit, by a 12 to 6 majority, to separate reforms aimed at stemming the flow of illegal immigrants from reforms to our structured, highly regulated legal immigration system. This separation is in keeping with the views of more than 8 out of 10 voters who believe that "Congress should settle the problem of illegal immigration before worrying about reducing the number of legal immigrants." It is in keeping with the views of the full 100 percent of economists surveyed by the Cato Institute who agree that immigration has had a favorable impact on the country's economic growth. And it is in keeping with our traditional commitment to equal opportunity and fair play because it makes it possible for us to concentrate on tracking down, expelling and keeping out those who would flout our laws without unduly burdening individuals and businesses who play by the rules.

We have too many illegal aliens. We do not, however, have a legal immigration crisis. The Immigration and Naturalization Service recently reported that 720,461 immigrants came to this country in 1995—more than 20 percent fewer than in 1993. As of 1990 immigrants made up only 8.5 percent of our population, far less than the averages of over 13 percent between 1860 and 1920.

During debate on this bill, many argued that illegal immigration reforms alone would be insufficient because over half of our illegal aliens first entered this country legally. These people come in on student or tourist visas, however, not (as charged) as family-sponsored immigrants. And S. 269, the illegal immigration reform bill, addresses the problem by focusing precisely on those immigrants who come to this country legally, then stay past the expiration dates of their visas. In contrast, eliminating whole categories of family sponsored legal immigration, as originally proposed in S. 1394, would do nothing to solve the problem of visa overstayers.

As important, the phenomenon of "chain migration"—by which one immigrant is said to flood the country with the relatives he or she immediately brings to America—is more fiction than fact and so should not drive our policy decisions. It takes an immigrant an average of 12 years before he or she sponsors even the first relative for entry into the U.S. At that slow pace any stampede of family-related immigrants is impossible. In fact, the General Accounting Office concluded in a 1988 study that the data "failed to confirm the existence or future likelihood of massive chain migration."

Yet some continue to claim that immigrants put a strain on our economy and local infrastructure by sponsoring many, often "distant," relatives for entry into the U.S. This is not the case. Under U.S. immigration law no "extended family" categories exist. This means no one can sponsor an aunt, uncle, cousin, or nephew for im-

migration. On the other hand, a U.S. citizen now can sponsor a parent, spouse, sibling or a minor or adult child. Proposed provisions to limit immigration to members of the original immigrant's "nuclear family" would simply hurt American citizens by disallowing their traditional right to bring their adult children and/or parents to this country. We believe that is wrong. If your only son or daughter turns 21 he or she does not cease to be a part of your family. And we strongly disagree, therefore, with the Committee Report's characterization of adult children as "distant" relatives.

As we and others made clear from the outset of this debate, we are committed to making common-sense reforms to our legal immigration system provided that the issues of legal and illegal immigration are kept separate and distinct. Thus, when the Judiciary Committee took up legal immigration, we offered with Senator Kennedy an amendment that will eventually reduce levels of family and diversity immigration by over 15 percent, give clear priority to close family members, and freeze applications for the brother and sister category.

These reforms transform the current family immigration preference system, with its rigid numerical quotas allocated to each family category, into a more flexible system with a carefully designed "spilldown" mechanism. This will ensure that spouses, minor children, and parents receive priority over adult sons and daughters, who in turn receive priority over brothers and sisters. With certain exceptions, visas will be available to lower priority categories only to the extent visas are not "soaked up" by higher priority categories. New applications for the brother and sister category will be frozen altogether.

Our amendment also includes a temporary backlog reduction program to address two temporary phenomena: the waiting list of spouses and children of legal permanent residents, and the existing backlog of brothers and sisters of U.S. citizens. By allowing for the speedier reunification of those husbands, wives, and minor children who are separated, and by providing some visas to brothers and sisters who have played by the rules, we can address these temporary problems in a fair and reasonable manner while shifting to an improved permanent system.

We emphasize, however, that the vast majority of persons on the backlog for spouses and children of permanent residents are already in the country, having been granted quasi-legal status to remain here with their amnestied sponsors. Thus, most of the concern about "the separation of nuclear family members" is misplaced. In that crucial respect, at least, the current immigration system is not broken.

Our proposal is also crafted so that in the "family preference" and diversity categories it will always make available fewer visas than would current law. In the family preference categories (spouses and minor children of permanent residents, adult unmarried and married children of citizens, adult unmarried children of permanent residents, siblings of citizens, and diversity visas) our amendment authorizes a total of 202,000 visas (175,000 family and 27,000 diversity), as compared with present law, which authorizes a total of 285,000 (230,000 family and 55,000 diversity). That is a cut of 83,000 permanent visas. Even with the inclusion of backlog

reduction visas, which last during the first ten years of our regime, our total is 277,000, which amounts to 8,000 fewer visas than under current law.

We should also point out that our new "spilldown" allocation would not, as the Committee Report suggests, somehow take effect only after 10 years pass. The spilldown mechanism would take effect as soon as the family immigration provisions generally take effect. It is true that our amendment establishes certain "floors" of minimum visas for adult children of citizens so long as the backlog in the new 1st preference (spouses and children of permanent residents) remains. But those temporary floors simply ensure that the 1st preference does not soak up all of the visas available. It also is true that, for a period of 10 years, our amendment provides for backlog visas as well as spilldown visas. But that in no way means that the spilldown itself somehow would not take effect for 10 years. On this point the committee report is simply mistaken.

Finally, in the area of employment immigration, we offered with Senator Specter an amendment to establish further safeguards against potential abuses of the H–1B program. Specifically, the amendment as adopted by the committee would sharply increase fines and penalties for H–1B program violation, allow the Department of Labor to initiate investigations of "H–1B-dependent" employers, and otherwise subject H–1B-dependent employers to strict oversight. These changes will protect American workers while preserving the H–1B programs for employers with a genuine need for it.

It is our hope that this bill will continue to focus on solving specific problems in our immigration system, rather than simply penalizing legal immigrants, their families, and employers. As the bill continues through the legislative process we will work to see that that is the case.

SPENCER ABRAHAM.

MINORITY VIEWS OF SENATORS KENNEDY, SIMON, LEAHY AND FEINGOLD

Any reform of legal immigration—by which people come to the United States legally under our laws—must meet three goals. First, it must allow for reunification of families. Second, it must protect American workers, while allowing our companies access to foreign workers when qualified Americans are unavailable. And third, it must ensure access to our country by immigrants from all parts of the world.

This legislation meets two of these goals. It allows for reunification of families, though at levels below current law. It continues the "diversity visa" program by which countries with low immigration can still qualify under our immigration laws, but with a 50 percent cut.

Regretfully, however, this bill fails to provide urgently needed protections for American workers under our immigration laws. In fact, the provisions in the current bill hurt American workers, rather than help.

First, section 201(a) weakens current enforcement and is a giant step backward for American workers. It states that the Department of Labor can only act against violations of immigration laws by employers if there is a complaint filed by a worker. This means the Department cannot initiate investigations if it receives a tip, cannot initiate random audits, and cannot even act on hard evidence of violations unless a formal complaint is filed by a worker.

Few workers will be willing to file complaints. Foreign workers will be fearful of losing their jobs. And U.S. workers will fear being "blackballed" by employers.

Though section 201(b) raises the penalties against employers who violate worker protections, these penalties are meaningless under the crippled enforcement scheme in this bill.

Second, the bill provides no protection against companies that lay off American workers to hire foreign workers, often at lower wages. Current law allows this practice, and the bill does nothing to change matters.

Third, the bill does not require employers to recruit U.S. workers before hiring foreign workers. Under the current temporary foreign worker program (the so-called "H–1B" visa), almost 400,000 workers are in the country at any given time. In no way are their employers required under U.S. law to recruit Americans before requesting temporary foreign workers.

Finally, the bill will result in lower wages for foreign workers, and will therefore undercut the wages and working conditions of U.S. workers. Section 201(d) states that employers may devise their own formulas for prevailing wage determinations, and gives the Department of Labor only 45 days in which to disprove the determination or else it is approved automatically. At the same time,

the provision provides the Labor Department with no resources or personnel to carry out this function. Therefore, it allows employers almost complete autonomy in determining the wage to be paid to the foreign workers they bring in.

Any immigration reform that deserves that name must address the abuses of working Americans which arise under our current immigration laws. We intend to offer amendments on the floor to strengthen our immigration laws to protect working American families, while enabling employers to get foreign workers when they truly need them.

The reforms must include at least the following elements to protect American workers:

I. Recruitment: Jobs Should Be Offered First to U.S. Workers Before Employers Can Bring in Foreign Workers

In those cases in which temporary and permanent foreign workers are truly the people who create jobs and enhance our global competitiveness—our immigration laws should enable their entry.

Americans would be appalled to learn, however, that under current law, employers bring in hundreds of thousands of foreign workers to fill normal skilled and professional jobs—all without having to offer the jobs first to U.S. workers. Almost 400,000 of these foreign workers are in the country today. They are called "temporary" foreign workers, but can stay for six years. Over 60 percent of these workers make under $50,000. Half of the requests from employers for these "temporary" workers is for physical therapists. A quarter of the requests are for computer programmers, mostly at the entry level.

When employers truly cannot find qualified American workers to perform these good middle class jobs, our immigration laws should be there to help them get the workers they need. It is our strong belief, however, that *our immigration laws should give American workers first crack at these good jobs.* But today, our laws do not give U.S. workers that opportunity.

Though employers are not required to recruit for U.S. workers before seeking *temporary* foreign workers, they are required to recruit at home before bringing in *permanent* immigrants. However, even this requirement currently is meaningless. The Employment Service refers U.S. workers to employers who claim they need to bring in an immigrant worker. And employers are required to advertise the job and interview any U.S. applicants.

Under the recruitment requirement in current law, the U.S. worker gets the job only one-half of a percent of the time. That means that there is only a one in two hundred chance that the current recruitment requirement will result in the hire of a U.S. worker. In fact, in most cases,[1] the employer already has the foreign worker on the payroll either as a temporary worker or an illegal immigrant and is simply trying to keep the worker permanently.

[1] The Department of Labor estimates that as many as 90% of employers seeking permanent immigrants for employment in fact already have the foreign worker on the payroll.

II. It Should Be Illegal To Replace Qualified American Workers With Foreign Workers

Under our immigration laws today, it is legal for an employer to bring in foreign workers to replace qualified American workers. American workers have fallen victim to this practice in recent years. In a number of instances, the U.S. workers were required to bear the humiliation of training their foreign replacements, who were then given the job at wages lower than those paid to the American worker.

This practice hurts almost everyone concerned. It hurts the American worker who loses a good job. It is unfair to the foreign worker, who is doing the same job, but for less pay. And it hurts employers who are playing by the rules and treating their workers fairly, but who must compete against firms that are abusing our immigration laws to get cheap foreign labor.

This practice will spread unless it is stopped in its tracks.

III. The Labor Department Needs Personnel and Authority To Enforce our Immigration Laws

The protections available to U.S. workers under current law—as well as any Congress may adopt in the future—offer little protection unless the Labor Department has the resources and authority to enforce them. Today it has neither.

Current law contains lopsided immigration enforcement provisions. When it comes to enforcement of laws related to temporary workers, the Labor Department can respond to complaints from U.S. workers, initiate investigations and conduct random audits. However, these authorities do not exist for enforcing our laws pertaining to permanent immigrants. With permanent immigrants, once the immigrant arrives, the Labor Department has no further role. An employer can pay an immigrant below market wages, for example, thereby undercutting U.S. workers. Since the immigrant is already here, there is nothing the Labor Department can do about this offense.

We believe also that the Labor Department should be authorized to charge a modest fee to those who request foreign workers. The funds should be retained by the Labor Department to pay for personnel needed to facilitate employers' applications and enforce the law. Both the Immigration and Naturalization Service and the State Department's consular bureau charge fees to cover their costs. The Labor Department should be permitted to do the same.

IV. Making Temporary Foreign Workers Really Temporary

Temporary foreign workers under current law can remain to fill a specific job for up to six years. For most Americans, that is the same as taking away that job permanently. Six years is longer than most Americans stay in a job. According to the Bureau of Labor Statistics at the Department of Labor, Americans between the ages of 25 and 34 change jobs on average every 3.5 years. Those ages 35 to 44 change jobs every six years.

We believe that most temporary foreign workers should be authorized to remain only for a shorter period—perhaps three years.

Only in extraordinary cases should temporary workers be permitted to stay longer.

V. The Number of Permanent Employment-Based Immigrants Should Be Reduced To Reflect Current Demand

If Congress is to reduce immigration numbers, it should cut here, too.

Already, this bill cuts family and diversity visa numbers below current demand in those categories. For the family visas alone, there are 3.5 million people—mostly relatives of American citizens—who are waiting in line due to the scarcity of visas.

Yet, at the same time, this bill continues to make available far more employment visas than employers are using.

Current law authorizes 140,000 employment visas. However, in 1995, employers used only 73,238 employment visas.[2] Similarly, in 1994, employers used only 82,604 visas.[3] Indeed, at no time since the number of employment visas has the number of skilled employment visas actually used exceeded 100,000.

If Congress is to be serious—and fair—in reducing immigration, immigration numbers should be reduced in this category, just as the Committee has done for family and diversity immigration.

Ted Kennedy.
Russ Feingold.
Patrick Leahy.
Paul Simon.

[2] This number discounts unskilled immigration, which was eliminated under a Kennedy amendment accepted by the Committee. Current law permits up to 10,000 of the 140,000 authorized visas to be used for unskilled immigrants.

[3] Again, this figure discounts unskilled immigrants.

XII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 605, as reported, are shown as follows existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

* * * * * * *

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

* * * * * * *

[(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

[(i) 480,000, minus

[(ii) the number computed under paragraph (2), plus

[(iii) the number (if any) computed under paragraph (3).

[(B)(i) For each of fiscal years 1992, 1993, and 1994, 465,000 shall be substituted for 480,000 in subparagraph (A)(i).

[(ii) In no case shall the number computed under subparagraph (A) be less than 226,000.]

WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

(i) 425,000, minus

(ii) the number computed under paragraph (2), plus

(iii) the number (if any) computed under paragraph (3).

(iv) the number (if any) specified in section 113 of the Legal Immigration Act of 1996.

(B) In no case shall the number computed under subparagraph (A) be less than 175,000.

* * * * * * *

(e) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—The worldwide level of diversity immigrants is equal to [55,000] *27,000* for each fiscal year.

NUMERCIAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. (a) PER COUNTRY LEVEL.—

[(1) NONDISCRIMINATION.—Except as specifically provided in paragraph (2) and in sections 101(a)(27), 201(b)(2)(A)(i), and 203, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

[(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Subject to paragraphs (3) and (4), the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 203 in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

[(3) EXCEPTION IF ADDITIONAL VISAS AVAILABLE.—If because of the application of paragraph (2) with respect to one or more foreign states or dependent areas, the total number of visas available under both subsections (a) and (b) of section 203 for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, paragraph (2) shall not apply to visas made available to such states or areas during the remainder of such calendar quarter.

[(4) SPECIAL RULES FOR SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

[(A) 74 PERCENT OF 2ND PREFERENCE SET-ASIDE FOR SPOUSES AND CHILDREN NOT SUBJECT TO PER COUNTRY LIMITATION.—

[(1) IN GENERAL.—Of the visa numbers made available under section 203(a) to immigrants described in section 203(a)(2)(A) in any fiscal year, 75 percent of the 2–A floor (as defined in clause (ii)) shall be issued without regard to the numerical limitation under paragraph (2).

[(ii) 2–A FLOOR DEFINED.—In this paragraph, the term ''2–A floor'' means, for a fiscal year, 77 percent of the total number of visas made available under section 203(a) to immigrants described in section 203(a)(2) in the fiscal year.

[(B) TREATMENT OF REMAINING 25 PERCENT FOR COUNTRIES SUBJECT TO SUBSECTION (e).—

[(i) IN GENERAL.—Of the visa numbers made available under section 203(a) to immigrants described in section 203(a)(2)(A) in any fiscal year, the remaining

25 percent of the 2–A floor shall be available in the case of a state or area that is subject to subsection (e) only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign state or area is less than the subsection (e) ceiling (as defined in clause (ii)).

[(ii) SUBSECTION (e) CEILING DEFINED.—In clause (i), the term "subsection (e) ceiling" means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 203(a) to immigrants who are natives of the state or area under section 203(a)(2) consistent with subsection (e).

[(C) TREATMENT OF UNMARRIED SONS AND DAUGHTERS IN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, the number of immigrant visas that may be made available to natives of the state or area under section [203(a)(2)(B)] *203(a)(4)* may not exceed—

[(i) 23 percent of the maximum number of visas that may be made available under section 203(a) to immigrants of the state or area described in section 203(a)(2) consistent with subsection (e), or

[(ii) the number (if any) by which the maximum number of visas that may be made available under section 203(a) to immigrants of the state or area described in section 203(a)(2) consistent with subsection (e) exceeds the number of visas issued under section 203(a)(2)(A),

[whichever is greater.

[(D) LIMITING PASS DOWN FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(a)(2) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(a)(2) consistent with subsection (e) (determined without regard to this paragraph), in applying paragraphs (3) and (4) of section 203(a) under subsection (e)(2) all visas shall be deemed to have been required for the classes specified in paragraphs (1) and (2) of such section.]

(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—(A) Subject to subparagraph (C), the total number of immigrant visas made available in any fiscal year to natives of any single foreign state or dependent area under section 203 (a) and (b) may not exceed the difference (if any) between—

(i) 20,000 in the case of any foreign state (or 5,000 in the case of a dependent area) not contiguous to the United States, or 40,000 in the case of any foreign state contiguous to the United States; and

(ii) the amount specified in subparagraph (B).

(B) The amount specified in this subparagraph is the amount by which the total of the number of immediate relatives (as de-

fined in section 201(b)(2)) admitted in the prior fiscal year who are natives of such state or dependent area exceeded 20,000 in the case of any foreign state (or 5,000 in the case of a dependent area) not contiguous to the United States, or 40,000 in the case of any foreign state contiguous to the United States.

(C) In any fiscal year in which immigrant visas numbers are made available under section 114(a)(1) the Legal Immigration Act of 1996, the per country limitation specified in subparagraph (A) shall not apply to aliens who are allotted visas under section 203(a), except that the number of immigrant visas made available to the natives of any foreign state or dependent area under section 203(a) for such fiscal year shall be subtracted from the level specified in subparagraph (A) for purposes of the application of such level to immigrants from such state or area under section 203(b) for such fiscal year.

* * * * * * *

(e) SPEOTMENT OF IMMIGRANT VISA NUMBERS TO NATIVES UNDER SUBSECTIONS (A) AND (B) OF SECTION 203, VISA NUMBERS WITH RESPECT TO NATIVES OF THAT STATE OR AREA SHALL BE ALLOCATED (TO THE EXTENT PRACTICABLE AND OTHERWISE CONSISTENT WITH THIS SECTION AND SECTION 203) IN A MANNER SO THAT—

(1) the ratio of the visa numbers made available under section 203(a) to the visa numbers made available under section 203(b) is equal to the ratio of the worldwide level of immigration under section 201(c) to such level under section 201(d);

* * * * * * *

(3) the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 203(b) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(b).

Nothing in this subsection shall be construed as limiting the number of visas that may be issued to natives of a foreign state or dependent area under section 203(a) or 203(b) if there is insufficient demand for visas for such natives under section 203(b) or 203(a), respectively, or as limiting the number of visas that may be issued under section **[**203(a)(2)(A)**]** *203(a)(1)* pursuant to subsection (a)(4)(A).

ALLOCATION OF IMMIGRANT VISAS

[SEC. 203. (a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allotted visas as follows.

[(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

[(2) SPOUSES AND UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants—

[(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

[(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence.

[shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

[(3) MARRIED SONS AND MARRIED DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

[(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).]

SEC. 203. (a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allotted visas as follows:

(1) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence shall be allocated visas in each fiscal year in a number equal to the worldwide level of family-sponsored immigrants calculated under section 201(c)(1), plus any visas not required in the previous fiscal year for the admission of immigrants under section 203(b).

(2) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas not required for the class specified in paragraph (1).

(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas not required for the classes specified in paragraphs (1) and (2).

(4) UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENTS.—Qualified immigrants who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence shall be allocated visas not required for the classes specified in paragraphs (1), (2), and (3).

(5) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas not required for the classes specified in paragraphs (1), (2), (3), and (4).

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) PRIORITY WORKERS.—Visas shall first be made available in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * * * * * *

(7) NOT COUNTING WORK EXPERIENCE AS AN UNAUTHORIZED ALIEN.—For purposes of this subsection, work experience obtained in employment in the United States with respect to which the alien was an unauthorized alien (as defined in section 274A(h)(3)) shall not be taken into account.

* * * * * * *

(c) DIVERSITY IMMIGRANTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 201(e) for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) * * *

* * * * * * *

(E) DISTRIBUTION OF VISAS.—

(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.—The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

* * * * * * *

(v) LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.—The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

(vi) NO VISAS FOR NATIVES OF CERTAIN COUNTRIES.—(I) Except as provided in subclause (III), the percentage of visas made available under this paragraph to natives of any state described in subclause (II) is zero.

(II) A state described in this subclause is a state for which the average annual admission of natives of that state is less than 1 percent of the per country limit applicable under section 202(a) to natives of that state in the previous fiscal year.

(III) The limitation contained in subclause (I) shall not apply to the territory specified in subparagraph (F) unless the average annual admission of diversity immigrants from such territory under this subsection is less than 1 percent of the total number of diversity immigrant visas which may be made available to natives of the territory in the most recent fiscal year for which data are available.

(IV) For purposes of this clause—

(aa) the average annual admission of natives of a foreign state is determined by dividing the number determined under subparagraph (A) by five; and

(bb) the average annual admission of diversity immigrants is determined for the most recent 5-fiscal-year period for which data are available on, if data are not available for 5-fiscal years, the next longest period of the fiscal years for which data are available, by dividing by five, or the appropriate lesser number, as the case may be, the total number of aliens who are natives of the territory and who were admitted or otherwise provided lawful permanent resident status under this subsection.

* * * * * * *

(3) MAINTENANCE OF INFORMATION.—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.

(4) FEES.—Fees for the furnishing and verification of applications for visas under this subsection and for the issuance of visas under this subsection may be prescribed by the Secretary of State in such amounts as are adequate to compensate the Department of State for the costs of administering the diversity immigrant program. Any such fees collected may be deposited as an offsetting collection to the appropriate Department of State appropriation to recover the costs of such program and shall remain available for obligation until expended.

* * * * * * *

(i) Except as otherwise provided in section 203(h)(2) and notwithstanding any other provision of law, with respect to any civil action against any agency which involves a cause or claim regarding the allocation of immigrant visas or determinations made on immigrant visa petitions under this section—

(1) suit must be brought within 90 days of the challenged action or determination;

(2) venue shall lie only in the District Court for the District of Columbia;

(3) suit may be brought only by persons who have petitioned for the issuance of an immigrant visa and have exhausted all available administrative remedies;

(4) no suit may be brought to compel the agency to adjudicate a pending visa petition;

(5) review of a denial of a visa petition shall be solely on the administrative record; and

(6) the court—

(A) must sustain the agency's action unless it has been shown by the petitioner to be clearly erroneous;

(B) may not review any exercise of the agency's discretion; and

(C) may not reverse or remand a determination on the basis, in whole or in part, that the agency's explanation of its action was not sufficiently extensive.

* * * * * * *

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a)(1)(A)(i) Any citizen of the United States claiming that an alien is entitled to [classification by reason of a relationship described in paragraph (1), (3), or [(4)] *(5)* of section 203(a)] *paragraph (3) or (5) of section 203(a)* or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

* * * * * * *

(B)(i) Any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section [203(a)(2)] *203(a)(1)* may file a petition with the Attorney General for such classification.

(ii) An alien who is the spouse of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section [203(a)(2)(A)] *203(a)(1),* and who has resided in the United States with the alien's legal permanent resident spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iii)) under such section if the alien demonstrates to the Attorney General that the conditions described in subclauses (I) and (II) of subparagraph (A)(iii) are met with respect to the alien.

(iii) An alien who is the child of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is eligible for classification under section [203(a)(2)(A)] *203(a)(1),* and who has resided in the United States with the alien's permanent resident alien parent may file a petition with the Attorney General under this subsection for classification of the alien under such section if the alien demonstrates to the Attorney General that—

* * * * * * *

(2)(A) The Attorney General may not approve a spousal second preference petition for the classification of the spouse of an alien if the alien, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term "spousal second preference petition" refers to a petition, seeking preference status under section [203(a)(2)] *203(a)(1)*, for an alien as a spouse of an alien lawfully admitted for permanent residence.

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF EXCLUDABLE ALIENS.—Except as otherwise provided in this Act, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:

(1) HEALTH-RELATED GROUNDS.—

* * * * * * *

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

* * * * * * *

(E) CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

* * * * * * *

(F) ECONOMIC ESPIONAGE AND PIRACY OF INTELLECTUAL PROPERTY.—Any person convicted of, or who admits having committed, an act in violation of any law, or who has violated any law, as determined by a court, pertaining to economic espionage or the piracy of intellectual property is excludable.

[(F)]*(G)* WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subject (h).

* * * * * * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATIONS.—

(A) ALIENS PREVIOUSLY DEPORTED.—

* * * * * * *

(E) SMUGGLERS.—

(i) IN GENERAL.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is excludable.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on may 5, 1988, and is seeking admission as an immediate relative or under section [203(a)(2)] *203(a)(1)* (including under

section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

* * * * * * *

(d)(1) The Attorney General * * *

* * * * * * *

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of the status as an immediate relative or immigrant under section 203(a) (other than paragraph **[**(4)**]** *(5)* thereof) if the alien has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

* * * * * * *

(n)(1) No alien may be admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b) in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

* * * * * * *

(2)(A) The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in an application submitted under paragraph (1) or a petitioner's misrepresentation of material facts in such an application. Complaints may be filed by any aggrieved person or organization (including bargaining representatives)**[**.**]**, *except that the Secretary may only file such a complaint in the case of an H–1B dependent employer (as defined in subparagraph (E)) or when conducting an annual review of a plan pursuant to subparagraph (F)(i) if there appears to be a violation of an attestation. No investigation or hearing shall be conducted with respect to an employer that is not an H–1B Dependent employer except in response to a complaint filed under the preceeding sentence.* No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

* * * * * * *

(C) If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D), a willful

failure to meet a condition of paragraph (1)(A), or a misrepresentation of material fact in an application—

(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed [$1,000] *$5,000* per violation) as the Secretary determines to be appropriate, and

[(ii) the Attorney General shall not approve petitions filed with respect to that employer under section 204 or 214(c) during a period of at least 1 year for aliens to be employed by the employer.]

(ii) the Attorney General shall not approve petitions filed with respect to that employer (or any employer who is a successor in interest) under section 204 or 214(c) for aliens to be employed by the employer—

(I) during a period of at least 1 year in the case of the first determination of a violation or any subsequent determination of a violation occurring within 1 year of that first violation;

(II) during a period of at least 5 years in the case of a determination of a willful violation occurring more than 1 year after the first violation; and—

(III) at any time in the case of a determination of a willful violation occurring more than 5 years after a violation described in subclause (II);

(D) If the Secretary finds, after notice and opportunity for a hearing, that an employer has not paid wages at the wage level specified under the application and required under paragraph (1), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed. *If a penalty under subparagraph (C) has been imposed in the case of a willful violation, the Secretary shall impose on the employer a civil monetary penalty in an amount equaling twice the amount of backpay.*

(E) In this subsection, the term "H–1B dependent employer" means an employer that—

(i)(I) has fewer than 21 full-time equivalent employees who are employed in the United States, and

(II) employs 4 or more nonimmigrants described in section 101(a)(15)(H)(i)(b); or

(ii)(I) has at least 21 full-time equivalent employees who are employed in the United States, and

(II) employs nonimmigrants described in section 101(a)(15)(H)(i)(b) in a number that is equal to at least 20 percent of the number of such full-time equivalent employees.

(F)(i) An employer who is an H–1B dependent as defined in section 212(n)(2)(E) may nevertheless be treated as an H–1B nondependent employer for 5 years on a probationary status if—

(I) the employer has demonstrated to the satisfaction of the Secretary of Labor that the employer has developed a plan for reasonably reducing the percentage of H–1B workers in its workforce over a 5-year period, and

(II) annual reviews of that plan by the Secretary of Labor indicate successful implementation of that plan.

If the employer has not met the requirements established in this subparagraph, the probationary status shall terminate and the employer shall be treated as an H–1B dependent employer until such time as the employer demonstrates to the satisfaction of the Secretary of Labor that the employer no longer is an H–1B dependent employer as defined in section 212(n)(2)(E).

(ii) The probationary status accorded in this subparagraph shall cease to be effective 5 years after the date of enactment of the plan to reduce dependence on H–1B workers. In applying this subparagraph, any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer under this subparagraph. For purposes of this subparagraph, aliens employed under a petition for nonimmigrants described in section 101(a)915)(H)(i)(B) shall be treated as employees, and counted as nonimmigrants under section 101(a)(15)(H)(i)(b).

(G) Under regulations of the Secretary, the provisions of this paragraph shall apply to complaints with respect to a failure of another employer to comply with an attestation described in paragraph (1)(E)(ii) in the same manner as they apply to complaints of a petitioner with respect to a failure to comply with a condition described in paragraph (1)(E)(i).

(3) For purposes of determining the actual wages paid under paragraph (1)(A)(i)(I), an employer shall not be required to have and document an objective system to determine the wages of workers.

(4) For purposes of determining the actual wage level paid under paragraph (1)(A)(i)(I), an H–1B nondependent employer of more than 1,000 employees in the United States may demonstrate that in determining the wages of nonimmigrants described in section 101(a)(15)(H)(i)(B), the employer utilizes a compensation and benefits system that has been previously certified by the Secretary of Labor (and recertified at such intervals the Secretary of Labor may designate) to satisfy all of the following conditions:

(A) The employer has a company-wide compensation policy for its full-time equivalent employees which ensures salary equity among employees similarly employed.

(B) The employer has a company-wide benefits policy under which all full-time equivalent employees similarly employed are eligible for benefits or under which some employees may accept higher pay, at least equal in value to the benefits, in lieu of benefits.

(C) The compensation and benefits policy is communicated to all employees.

(D) The employer has a Human Resources or Compensation function that administers its compensation system.

(E) The employer has established documentation for the job categories in question.

An employer's payment of wages consistent with a system which meets the conditions of subparagraphs (A) through (E) and which has been certified by the Secretary of Labor pursuant to

this paragraph shall be deemed to satisfy the requirements of paragraph (1)(A)(i).

(5) For purposes of determining and enforcing the prevailing wage paid under paragraph (1)(A)(i)(II) employers may provide a published survey, a State employment agency determination, a determination by an accepted private source or any other legitimate source. Not later than 180 days from the date of enactment of this Act, the Secretary of Labor shall provide for acceptance of prevailing wage determinations not made by a State employment security agency. The Secretary of Labor or his designate must either accept such non-State employment security agency wage determination or issue a written decision rejecting the determination and detailing the legitimate reasons that the determination is not acceptable. If a detailed rejection is not issued within 45 days of the date of the Secretary's receipt of such determination, the determination shall be deemed acceptable. An employer's payment of wages consistent with a prevailing wage determination not rejected by the Secretary of Labor under this paragraph shall be deemed to satisfy the requirements of paragraph (1)(A)(i)(II).

(6) In computing the prevailing wage level for researchers in an area of employment for purposes of paragraph (1)(A)(i)(II) and subsection (a)(5)(A) in the case of an employee of (A) an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity, or (B) a nonprofit or Federal research institute or agency, the prevailing wage level shall only take into account researchers at such institutions, entities, and agencies in the area of employment.

(7) In carrying out this subsection, in the case of an employer that is not an H–1B dependent employer—

(A) the employer is not required to post notices at worksites that were not listed on the application under paragraph (1) if the worksites are within the area of intended employment listed on such application; and

(B) if the employer has filed and had certified an application under paragraph (1) with respect to one or more nonimmigrants described in section 101(a)(15)(H)(k)(b) for one or more areas of employment—

(i) the employer is not required to file and have certified an additional application under paragraph (1) with respect to such a nonimmigrant for an area of employment not listed in the previous application because the employer has placed one or more such nonimmigrants in such a nonlisted area so long as either (I) each such nonimmigrant is not placed in such nonlisted areas for a period exceeding 45 workdays in any 12-month period and not to exceed 90 workdays in any 36-month period, or (II) each such nonimmigrant's principal place of employment has not changed to a nonlisted area, and

(ii) the employer is not required to pay per diem and transportation costs at any specified rates for work performed in such a nonlisted area.

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) IN GENERAL.—

* * * * * * *

(g) DEFINITIONS.—IN this section:

(1) The term ''alien spouse'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 201(b)) as the spouse of a citizen of the United States,

(B) under section 214(d) as the fiancee or fiance of a citizen of the United States or

(C) under section [203(a)(2)] *203(a)(1)* as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 203(d).

* * * * * * *

VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this section referred to as the ''pilot program'') under which the requirement of paragraph (7)(B)(i)(II) of section 212(a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

* * * * * * *

(f) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term ''pilot program period'' means the period beginning on October 1, 1988, and ending on September 30, [1996] *1998*.

[(g) PILOT PROGRAM COUNTRY WITH PROBATIONARY STATUS.—

[(1) IN GENERAL.—The Attorney General and the Secretary of State acting jointly may designate any country as a pilot program country with probationary status if it meets the requirements of paragraph (2).

[(2) QUALIFICATIONS.—A country may not be designated as a pilot program country with probationary status unless the following requirements are met:

[(A) NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of the country during the two previous full fiscal years was less than 3.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

[(B) NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS YEAR.—The number of refusals of nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was less than 3 percent of the total number of

nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

[(C) LOW EXCLUSIONS AND VIOLATIONS RATE FOR PREVIOUS YEAR.—The sum of—

[(i) the total number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

[(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 1.5 percent of the total number of nationals of that country who applied for admission as non-immigrant visitors during the preceding fiscal year.

[(D) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

[(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS FOR PILOT PROGRAM COUNTRIES WITH PROBATIONARY STATUS.—The designation of a country as a pilot program with probationary status shall terminate if either of the following occurs:

[(A) The sum of—

[(i) the total number of nationals of that country who were excluded from admission or withdrew their application for admission during the preceding fiscal year as a nonimmigrant visitor, and

[(ii) the total number of nationals of that country who were admitted as visitors during the preceding fiscal year and who violated the terms of such admission,

is more than 2.0 percent of the total number of nationals of that country who applied for admission as non-immigrant visitors during the preceding fiscal year.

[(B) The country is not designated as a pilot program country under subsection (c) within 3 fiscal years of its designation as a pilot program country with probationary status under this subsection.'".

[(4) DESIGNATION OF PILOT PROGRAM COUNTRIES WITH PROBATIONARY STATUS AS PILOT PROGRAM COUNTRIES.—In the case of a country which was a pilot program country with probationary status in the preceding fiscal year, a country may be designated by the Attorney General and the Secretary of State, acting jointly as a pilot program country under subsection (c) if—

[(a) the total of the number of nationals of that country who were excluded from admission or withdrew their application of admission during the preceding fiscal year as a nonimmigrant visitor, and

[(B) the total number of nationals of that country who were admitted as nonimmigrant visitors during the preceding fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors, during such preceding fiscal year.]

(g) DURATION AND TERMINATIONS OF DESIGNATION.—

(1) PROGRAM COUNTRIES.—(A) Upon determination by the Attorney General that a visa waiver program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

(B) If the program country's disqualification rate is greater than 2 percent but less than 2 percent but less than 3.5 percent, the Attorney General and the Secretary of State shall place the program country in probationary status for a period not to exceed 3 full fiscal years following the year in which the designation of the country as a pilot program is made.

(C) If the program country's disqualification rate is 3.5 percent or more, the Attorney General and the Secretary of State, acting jointly, shall terminate the country's designation effective at the beginning of the second fiscal year following the fiscal year in which the determination is made.

(2) END OF PROBATIONARY STATUS.—(A) If the Attorney General and the Secretary of State, acting jointly, determine at the end of the probationary period described in subparagraph (B) that the program country's disqualification rate is less than 2 percent, they shall redesignate the country as a program country.

(B) If the Attorney General and the Secretary of State, acting jointly, determine at the end of the probationary period described in subparagraph (B) that a visa waiver country has—

(i) failed to develop a machine readable passport program as required by subparagraph (C) of subsection (c)(2), or

(ii) has a disqualification rate of 2 percent or more,

then the Attorney General and the Secretary of State shall jointly terminate the designation of the country as a visa waiver program country, effective at the beginning of the first fiscal year following the fiscal year in which the determination is made.

(3) DISCRETIONARY TERMINATION.—Notwithstanding any other provision of this section, the Attorney General and the Secretary of State, acting jointly, may for any reason (including national security or failure to meet any other requirement of this section), at any time, rescind any waiver under subsection (a) or terminate any designation under subsection (c), effective upon such date as they shall jointly determine.

(4) EFFECTIVE DATE OF TERMINATION.—Nationals of a country whose eligibility for the program is terminated by the Attorney General and the Secretary of State, acting jointly, may continue to have paragraph (7)(B)(i)(II) of section 212(a) waived, as authorized by subsection (a), until the country's termination of designation becomes effective as provided in this subsection.

(5) NONAPPLICABILITY PROVISIONS.—Paragraph (1)(C) and (3) shall not apply unless the total number of nationals of a designated country, as described in paragraph (6)(A), is in excess of 100.

(6) DEFINITION.—For purposes of this subsection, the term "disqualification rate" means the ratio of—

(A) the total number of nationals of the visa waiver program country—

(i) who were excluded from admission or withdrew their application for admission during the most recent fiscal year for which data is available, and

(ii) who were admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission, to

(B) the total number of nationals of that country who applied for admission as nonimmigrant visitors during such fiscal year.

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CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be deported if the alien is within one or more of the following classes of deportable aliens:

(1) EXCLUDABLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS.—

(A) EXCLUDABLE ALIENS.—Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens excludable by the law existing at such time is deportable.

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(E) SMUGGLING.—

(i) IN GENERAL.—Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section **[**203(a)(2)**]** *203(a)(1)* (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

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SUSPENSION OF DEPORTATION; VIOLUNTARY DEPARTURE

SEC. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien (other than an alien described in section 241(a)(4)(D)) who applies to the Attorney General for suspension of deportation and—

(1) * * *

* * * * * * *

(2) is deportable under paragraph *(1)(B),* (2), (3), or (4) of section 241(a); has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

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IMMIGRATION ACT OF 1990

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Subtitle B—Preference System

PART 1—FAMILY-SPONSORED IMMIGRANTS

SEC. 111. FAMILY-SPONSORED IMMIGRANTS.

Section 203 (8 U.S.C. 1153) is amended—

(1) by redesignating subsections (b) through (e) as subsections (d) through (g), respectively, and

(2) **[**Omitted; revised text of subsection (a) of section 203.**]**

SEC. 112. TRANSITION FOR SPOUSES AND MINOR CHILDREN OF LEGALIZED ALIENS.

(a) ADDITIONAL VISA NUMBERS.—

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(b) ORDER.—Visa numbers under this section shall be made available in the order in which a petition, in behalf of each such immigrant for classification under section **[**203(a)(2)**]** *203(a)(1)* of the Immigration and Nationality Act, is filed with the Attorney General under section 204 of such Act.

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Subtitle D—Miscellaneous

SEC. 151. REVISION OF SPECIAL IMMIGRANT PROVISIONS RELATING TO RELIGIOUS WORKERS (C SPECIAL IMMIGRANTS).

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SEC. 155. EXPEDITED ISSUANCE OF LEBANESE SECOND AND FIFTH PREFERENCE VISAS.

(a) IN GENERAL.—In the issuance of immigrant visas to certain Lebanese immigrants described in subsection (b) in fiscal years 1991 and 1992 and notwithstanding section 203(c) (or section 203(e), in the case of fiscal year 1992) of the Immigration and Nationality Act (to the extent inconsistent with this section), the Secretary of State shall provide that immigrant visas which would otherwise be made available in the fiscal year shall be made available as early as possible in the fiscal year.

(b) LEBANESE IMMIGRANTS COVERED.—Lebanese immigrants described in this subsection are aliens who—

(1) are natives of Lebanon,

(2) are not firmly resettled in any foreign country outside Lebanon, and

(3) as of the date of the enactment of this Act, are the beneficiaries of a petition approved to accord status under section [203(a)(2)] *203(a)(1)* or 203(a)(5) of the Immigration and Nationality Act (as in effect as of the date of the enactment of this Act),

or who are the spouse or child of such an alien if accompanying or following to join the alien.

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Subtitle E—Effective Dates; Conforming Amendments

SEC. 161. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on October 1, 1991, and apply beginning with fiscal year 1992.

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(c) GENERAL TRANSITIONS.—

(1) In the case of a petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section 203(a)(3) or section 203(a)(6) of such Act (as in effect before such date)—

* * * * * * *

(2) Any petition filed under section 204(a) of the Immigration and Nationality Act before October 1, 1991, for preference status under section [203(a)(4)] *203(a)(5)* or section 203(a)(5) of such Act (as in effect before such date) shall be deemed, as of such date, to be a petition filed under such section for preference status under section 203(a)(3) or section [203(a)(4)] *203(a)(5)* respectively, of such Act (as amended by this title).

D. VIRGIN ISLANDS NONIMMIGRANT ALIEN ADJUSTMENT ACT OF 1982

(Public Law 97–271, Sept. 30, 1982; 8 U.S.C. 1255 note, as amended by the Immigration Act of 1990)

SHORT TITLE AND FINDINGS

SECTION 1. (a) This Act may be cited as the "Virgin Islands Nonimmigrant Alien Adjustment Act of 1982".

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SEC. 2. (a) The status of any alien described in subsection (b) may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien—

* * * * * * *

(c)(1) The numerical limitations described in sections 201(a) and 202 of the Act shall not apply to an alien's adjustment of status under this section. Such adjustment of status shall not result in any reduction in the number of aliens who may acquire the status of an alien lawfully admitted to the United States for permanent residence under the Act.

* * * * * * *

(4) For purposes of this subsection, the terms "second preference petition", "fourth preference petition", fifth preference petition", and "immediate relative petition" mean, in the case of an alien, a petition filed under section 204(a) of the Act to grant preference status to the alien by reason of the relationship described in section 203(a)(2), 03(a)(4) *203(a)(5)* 203(a)(5), or 201(b), respectively of the Act (as in effect before October, 1, 1991 or by reason of the relationship described in section 203(a)(*1*), 203(a)(3), or **[**203(a)(4)**]**, or 201(b)(2)(A)(i), respectfully, of such Act (as in effect on or after such date).

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M. SOVIET SCIENTISTS IMMIGRATION ACT OF 1992

(Public Law 102–509, October 24, 1992)

SECTION 1. SHORT TITLE.

This Act may be cited as the "Soviet Scientists Immigration Act of 1992".

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SEC 4. CLASSIFICATION OF INDEPENDENT STATES SCIENTISTS AS HAVING EXCEPTIONAL ABILITY.

(a) IN GENERAL.—The Attorney General shall designate a class of eligible independent states and Baltic scientists, based on their level of **[**expertise**]**, *education and experience* as aliens who possess "exceptional ability in the sciences", for purposes of section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C.

1153(b)(2)(A)), whether or not such scientists possess advanced degrees.

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